

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

November 20, 2008

A meeting of the Board of Environmental Protection was held on Thursday, November 20, 2008 at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott and Nancy Ziegler.

Absent: Lissa Widoff

Vacancy: There is one vacancy on the Board.

Staff: Hetty Richardson, Bureau of Land and Water Quality
Linda Kokemuller, Bureau of Land and Water Quality
Susan Davies, Bureau of Land and Water Quality
David Courtemanch, Bureau of Land and Water Quality
Dana Murch, Bureau of Land and Water Quality
Lynne Cayting, Bureau of Air Quality
Mike Hudson, Bureau of Remediation and Waste Management
Mark Hyland, Bureau of Remediation and Waste Management

Others: Deborah N. Garrett, Deputy Commissioner
Mary Sauer, Assistant Attorney General
Jan McClintock, Assistant Attorney General
Cindy Bertocci, BEP Executive Analyst

(Meeting adjourned at approximately 12:30 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: DEPUTY Commissioner Deborah Garrett reported the following:

Commissioner Littell is in Boston participating in two panels discussing climate change. One is at a meeting of the National Climate Registry where David will be speaking on Maine's role in climate change policy. The other panel is addressing land use policy/sprawl and the interrelationship between land use policy and climate change.

Budget Curtailment: The Governor has announced a budget curtailment reducing expenditures for the balance of the current fiscal year by nearly \$80 million. This amounts to approximately \$350,000 for the Department. There will also be a decrease of 10% in the General Fund budget for fiscal year 10/11. The Department's FY08 General Fund budget was approximately \$6.7 million. There may be further budget reductions ahead.

Applications: There has been a decline in applications submitted, likely partly in response to the general downturn in the state and national economy. The Department does expect to receive wind power project applications in the new year, as well as the CMP Reliability Project.

Staff Day: The annual Department staff day at which a number of awards are presented is scheduled for Wednesday, December 17, 2008 from 10 am until 2:30 pm at the Augusta Civic Center. Board members are invited to attend.

B. COMMENTS FROM THE BEP CHAIR: Ms. Lessard stated that she is looking forward to serving as Chair

C. EXECUTIVE ANALYST COMMENTS:

Appeals: The Hancock County Superior court recently upheld the Board's decision concerning the application of Anthony & Erin Uliano, which denied construction of a private recreational dock in Bar Harbor. The matter has been appealed to the Law Court.

Board Jurisdiction: The Commissioner received a request for Board jurisdiction and a public hearing on the application by Dale Prentice to expand an existing commercial wharf in the New Harbor. The primary issues raised by the persons requesting the hearing involve issues of property law. The Commissioner has determined that the application does not meet the standard for Board jurisdiction and that a public hearing is not warranted.

- D. BOARD CALENDAR:** Reviewed. No Board meeting on December 4, 2008. Board member Ziegler asked if there were any major projects on the Board's schedule in the near future.

The Executive Analyst stated that she did not know if or when any of the LNG projects would be re-submitted. Bureau Director Mark Hyland noted that the Commissioner would be issuing an order shortly to Mallinckrodt for the former Holtra-Chem facility in Orrington. That order may be appealed to the Board.

Board members stated that they would like a work session on the Department's enforcement policies at a meeting early in the new year.

- E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: None**

- F. EXECUTIVE SESSION: None**

II CONSENT AGENDA ITEMS

The Board voted (6-0-2-1) on a motion to approve consent agenda item 1 as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, P. Andrews Nixon, Don Guimond, and Sue Lessard voted to support the motion. Board members Nancy Ziegler and Matt Scott abstained. Board member Lissa Widoff was absent.

1. Minutes BEP Meeting September 4, 2008.

The Board voted (6-0-2-1) on a motion to approve consent agenda item 2 as presented.

Board members M. Wing Goodale, Richard Gould, P. Andrews Nixon, Don Guimond, Sue Lessard, Matt Scott and Nancy Ziegler voted to support the motion. Board members Elizabeth Ehrenfeld and Don Guimond abstained. Board member Lissa Widoff was absent.

2. Minutes BEP Meeting September 18, 2008.

The Board voted (8-0-0-1) on a motion to approve consent agenda items 3, 4, 5, 6, 7, and 8 as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, P. Andrews Nixon, Sue Lessard, Matt Scott and Nancy Ziegler voted to support the motion. Board member Lissa Widoff was absent.

3. PLEASANT RIVER LUMBER COMPANY, Dover-Foxcroft. Administrative Consent Agreement (BAQ)
4. CASCO BAY MOTORS, Yarmouth. Administrative Consent Agreement (BAQ).
5. VAUGHN THIBODEAU AND SONS, INC., Hampden. Administrative Consent Agreement (BLWQ – Land).
6. JEM REALTY ENTERPRISES, LLC., South Berwick. Administrative Consent Agreement (BLWQ – Land).

7. CHARLES T. KNOWLES 1V, Eliot. Administrative Consent Agreement (BLWQ – Land).
8. YORK MARINE, INC., Rockland. Administrative Consent Agreement (BRWM).

The Board voted (8-0-0-1) on a motion to approve consent agenda item 9 with the following amendment:

*Page 8, paragraph 15 B. Five additional payments shall be in the amount of thirteen thousand five hundred fifty-eight dollars and seventeen cents (\$13,558.17) and shall be due on or before the first day of each month for the five consecutive months **subsequent to the first payment beginning on February 1, 2009.***

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, P. Andrews Nixon, Sue Lessard, Matt Scott and Nancy Ziegler voted to support the motion. Board member Lissa Widoff was absent.

9. MODERN WOODCRAFTS, LLC, Lewiston. Administrative Consent Agreement (BRWM)

Board member Ziegler commended staff for their efforts to conclude agreements with York Marine and Modern Woodcrafts.

Board member Gould expressed concern that a company, in this case York Marine, would repeatedly ignore Notices of Violation and fail to undertake corrective actions requested by Department staff.

III. Regular Agenda

1. CHAPTER 310 WETLANDS AND WATERBODIES PROTECTION, SECTION 5(A), GENERAL STANDARDS, AVOIDANCE (adoption).
Staff: Hetty Richardson and Linda Kokemuller, Bureau of Land and Water Quality

The Board voted (8-0-0-1) on a motion to approve the amendments to Chapter 310 clarifying the language regarding practicable alternatives and adding activities for which no practicable alternative may exist, with the following minor amendment:
*Correction of numbering error: **5A(1)(a4)***

The vote was taken pursuant to 38 M.R.S. Sections 341-D(1-B), and 480-A through 480-GG.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Lissa Widoff was absent.

2. CHAPTER 127 NEW MOTOR VEHICLE EMISSION STANDARDS / AMENDMENTS
(post for public hearing)

Staff: Lynne Cayting, Bureau of Air Quality

The Board voted (8-0-0-1) on a motion to post Chapter 127 for public hearing. The vote was taken pursuant to 38 M.R.S. §§ 341-D(1-B), 585, 585-A, and 585-D.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Lissa Widoff was absent.

3. S.D. WARREN COMPANY // PRESUMPSCOT RIVER HYDRO PROJECTS
L-19713-33-F-C (appeal by Friends of Sebago Lake)

Staff: Dana Murch, Bureau of Land and Water Quality

The Board voted (8-0-0-1) on a motion to grant the appeal, reverse Department Order #L-19713-33-F-C, and remand the condition compliance applications to the Commissioner for continued processing. The vote was taken pursuant to 38 M.R.S. § 341-D(4) and 06-096 CMR Chapter 2.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, and Nancy Ziegler voted to support the motion. Board member Lissa Widoff was absent.

4. 2008 PROPOSED WATER QUALITY RECLASSIFICATION FOR CERTAIN MAINE
WATERS (work session)

Staff: Susan Davies and David Courtemanch, Bureau of Land and Water Quality

The Board concluded the work session begun at the November 6, 2008 meeting reviewing comments received on proposed changes to the classification of certain waterbodies and staff's preliminary responses to those comments, with a focus on the Crooked River and Jepson Brook. Since the record is closed, the Board did not receive further public comment at the work session. Chair Lessard noted that the Board would take official notice of LD 2244 An Act to Reclassify Surface Waters of the State approved by the 114th Maine Legislature, Second Regular Session. No vote was taken at the meeting. The Department will bring its final recommendation to the Board for a vote at a future regular meeting.